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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Monica Michelizzi,

10 Plaintiff,

11 v.

12 Beatitudes Campus LLC, et al.,

13 Defendants.
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No. CV-22-00072-PHX-DWL

ORDER

15 The Court has an independent obligation to determine whether it has subject-matter
16 jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). “If at any time
17 before final judgment it appears that the district court lacks subject matter jurisdiction, the
18 case shall be remanded.” 28 U.S.C. § 1447(c).

19 Defendants The Beatitudes Campus, LLC, dba Beatitudes Campus of Care,
20 Beatitudes at Home and Be At Home Beatitudes Campus (“the Beatitudes Defendants”)
21 operate an independent living apartment (“Beatitudes”) in Phoenix where Mary Lois
22 Jensen (“Mrs. Jensen”) was a resident for many years, beginning in 2012. (Doc. 1-4 at 10-
23 14 ¶¶ 6, 10, 16.) The complaint alleges that “in December 2020, Beatitudes required
24 Beatitudes at Home companions¹ to care for known COVID-19 positive residents, and
25 without quarantine or proper [personal protective equipment], required the same
26 companions to also serve non-infected residents including those living in independent
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28 ¹ The “companions” are caregivers who provide “companionship, assistance with
light housekeeping, laundry, ironing, meal preparation, errands, dressing and personal
hygiene, and pet care.” (Doc. 1-4 at 14 ¶ 17.)

1 living apartments,” and that Mrs. Jensen died from acute respiratory failure as a result of
 2 COVID-19 after she was exposed to the virus by one of these “companions.” (*Id.* at 18-20
 3 ¶¶ 39-54.) Plaintiff Monica Michelizzi, Mrs. Jensen’s daughter, brings this action
 4 individually and as the personal representative of her estate, asserting a state-law wrongful
 5 death action. (*Id.* at 22-23 ¶¶ 64-68 [“Defendants’ gross negligence and recklessness
 6 directly resulted in Mrs. Jensen’s death.”].)

7 Defendants removed this action, asserting that “federal question jurisdiction is
 8 proper under the doctrine of ‘complete preemption’” by the Public Readiness and
 9 Emergency Preparedness Act (“PREP Act”), 42 U.S.C. §§ 247d-6d(d), 247d-6e (2020)
 10 (Doc. 1 ¶¶ 15, 18-20) and that “[r]emoval is also proper because Plaintiff’s complaint
 11 presents a ‘substantial federal question.’” (*Id.* ¶ 26.)

12 The notice of removal states that “[t]he Ninth Circuit has not yet spoken on whether
 13 the PREP Act triggers complete preemption, and thus no binding precedent exists for this
 14 Court,” but identifies a case from the Central District of California as supporting removal
 15 in this circumstance. (*Id.* ¶ 22.) The notice of removal also acknowledges in a footnote
 16 that “[t]o date, the Third Circuit is [the] only federal appellate court to address the issue.”
 17 (*Id.* at 9 n.4.) That footnote fails to mention that the Third Circuit held that federal
 18 jurisdiction is lacking—the PREP Act does not completely preempt state-law negligence
 19 claims, and these claims do not raise significant federal issues. *Maglioli v. All. HC*
 20 *Holdings LLC*, 16 F.4th 393 (3d Cir. 2021) (“Here, the estates of the deceased filed
 21 wrongful-death lawsuits against the nursing homes. They filed in state court and asserted
 22 only garden-variety state-law claims, so state court is where these cases belong.”). That
 23 footnote also fails to mention that the Third Circuit identified the Central District of
 24 California decision cited by Defendants as an outlier in the course of emphasizing that
 25 “[n]early every federal district court to confront these cases,” has dismissed for lack of
 26 jurisdiction and remanded to the state court.” *Id.* at 402 & n.2.

27 The facts of *Maglioli* are nearly identical to the facts here—residents of nursing
 28 homes tragically died from COVID-19 and representatives of the estates allege that the

1 nursing homes negligently exposed the deceased—and the cause of action is the same
2 (wrongful death).

3 The Third Circuit’s careful analysis in *Maglioli* is persuasive, and the Court can
4 discern no distinction. Defendant does not distinguish the case but instead asserts that “the
5 *Maglioli* court misapplied the doctrine of complete preemption.” (Doc. 8 at 8.)
6 Defendant’s brief analysis has not persuaded the Court that the Third Circuit got it wrong.
7 Thus, “the Court joins the growing consensus finding that the PREP Act is not a complete
8 preemption statute.” *Roebuck v. Clinic*, 2021 WL 1851414, *5 (D. Ariz. 2021).

9 As a final matter, Defendant notes that *Martin v. Serrano Post Acute LLC*, 2020 WL
10 5422949 (C.D. Cal. 2020), a case raising similar issues, is currently being appealed to the
11 Ninth Circuit (case number 20-56078) and requests that the Court “reserve its decision on
12 whether to remand this matter until after the *Martin* appeal is decided.” (Doc. 8 at 9.)
13 Defendants suggest that the Court await a ruling in *Martin*, and/or await resolution of the
14 pending petition for rehearing and rehearing *en banc* in *Maglioli*, before deciding whether
15 this case should be remanded and note that a contrary approach would effectively deprive
16 them of a remedy, because erroneous remand decisions are not removable.

17 Although these suggestions are not unreasonable, the difficulty with Defendants’
18 proposal is that there is a “strong presumption” against removal jurisdiction. *Gaus v. Miles*,
19 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (“Federal jurisdiction must be rejected if there is
20 any doubt as to the right of removal in the first instance.”). “If at any time before final
21 judgment it appears that the district court lacks subject matter jurisdiction, the case shall
22 be remanded.” 28 U.S.C. § 1447(c). Critically, “[w]here doubt regarding the right to
23 removal exists, a case should be remanded to state court.” *Matheson v. Progressive*
24 *Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

25 Here, at a minimum, there is doubt regarding the right to removal. In this
26 circumstance, the Court is not at liberty to await developments in other cases (particularly
27 cases in which it is anybody’s guess when a decision will be issued) before deciding the
28 remand issue. The presence of doubt alone requires remand.

1 Accordingly,

2 **IT IS ORDERED** that this case is remanded to Maricopa County Superior Court.

3 Dated this 11th day of February, 2022.

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8 Dominic W. Lanza
9 United States District Judge
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